SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATION NOTE No. 5/2016

THE TC PARTLY UPHOLDS AN APPEAL FILED BY THE CATALONIAN *GENERALITAT*, CONFIRMING THAT URBAN INSPECTION REGULATIONS FALL WITHIN THE COMPETENCE OF AUTONOMOUS COMMUNITIES

The Plenary Meeting of the Constitutional Court (TC) has upheld the unconstitutionality and consequent nullity of two articles of Royal Decree-Law 8/2011, of 1 July, on measures to support mortgage debtors, to control public expense and the cancellation of debts with enterprises and freelance professionals held by local entities, to promote business activity and to encourage a renovation and simplification of the administrative system. The appeal, in which Andrés Ollero acted as Reporting Judge, has partly upheld the appeal brought by the Catalonian *Generalitat* and considers that both provisions annulled infringe the competences of Autonomous Communities in urban development matters.

Articles 21 and 22 of Royal Decree-Law 8/2011 foresee preventive control over the legal duty of building owners to preserve and rehabilitate the same. In other words, they introduce amendments in urban development inspection regulations. The Preamble of the law states that the challenged decree "*generalizes technical building inspections, rendering them compulsory, as well as their essential requirements*". Thus, it adds, this instrument is endowed with the "*necessary uniformity*" to ensure that the housing park meets minimum quality standards.

The Catalonian *Generalitat* claims that both provisions invade the competence of autonomous communities; the State Attorney, in turn, claims that the rules are covered by the competences reserved by the Constitution in favour of the State in Art. 149.1, sections 13 and 23.

According to constant case-law, the judgment explains, Art. 149.1.13 of the Spanish Constitution (CE) "*renders the State competent to generally arrange the economy, to include defining lines of action aimed at achieving the global or sectoral economic policy objectives established by the Constitution itself* (…)". The TC has affirmed that this constitutional provision should be "*restrictively*" interpreted, given that "*an excessively broad interpretation could limit and even void the legitimate sectoral competences of Autonomous Communities*". Thus, in urban development matters, the State's competence will only cover those measures with "*a direct and relevant impact on the general economy*"".

Furthermore, Art. 149.1.23 CE should also be restrictively interpreted, according to the case-law. Consequently, any environmental protection rules issued by the State will conform to the constitutional competence order only when, directly, they are aimed at environmental "*preservation, conservation or improvement*".

The Plenary Meeting has stated that the purpose of building inspections is not just "*the achievement of general economy policy objectives; nor does it have any direct and material impact on the economy*". Likewise, it adds, "*related regulations do not pursue the preservation, conservation or improvement of the environment·*"; nor may the measure "*be considered as essentially aimed at protecting urban surroundings, based on a broad interpretation of the term "environment"*".

Rather, a "*technical*" activity is regulated "*aimed at preventing and controlling any urban development irregularities or illegalities, and to check that owners have fulfilled their duty of conservation*". Consequently, both disputed provisions "*clearly*" affect a matter- urban development management or planning- that falls within the "*competence of Autonomous Communities*"; Articles 149.1.13 and 23 CE "*do not entitle the State to establish provisions on requirements, characteristics and timeframes for this inspection activity*".

Furthermore, the judgment has dismissed the fact that Art. 149.1.1 CE allows urban development inspections to be regulated, as this constitutional provision "*only entitles the State to establish basic terms to guarantee the equal exercise of rights and fulfilment of constitutional duties*". Art. 149.1.1 CE, adds the Plenary Meeting, "*cannot be construed as a horizontal title "able to enter any legal matter or sector, merely because the latter may be redirected, albeit remotely, towards a constitutional right or duty*".

In relation to the pleadings of the appellant, related to Articles 17.1.c), 18.1 and 23 of Royal Decree-Law 8/2011, the Plenary Meeting has declared that this part of the appeal has been subsequently lost, as said provisions have been repealed by later legislative reforms.

Madrid, 26 January 2016.